IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2327 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NISSAR AHMED @ BOSS RUKMDDIN SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP for Respondent No. 1 to 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/05/2000

ORAL JUDGEMENT

#. The petitioner - Nisharahmed @ Boss Rukmuddin Shaikh, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in

exercise of powers under Section 3(1) of the PASA Act, dated January 24, 2000.

#. The grounds of detention indicate that the detaining authority took into consideration two offences registered against the petitioner. The detaining authority also took into consideration the statements of two anonymous witnesses and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioner has challenged this order of detention on various counts. Learned advocate submitted that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate this submission, learned counsel submitted that the statements of two anonymous witnesses were recorded on January 21, 2000 and January 22, 2000, which were verified by the detaining authority on January 24, 2000 and the order of detention is passed on January 24, 2000. Learned counsel submitted, therefore, that there was no time for the detaining authority to give consideration to the aspect of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22 (5) of the Constitution. Learned counsel for the petitioner therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, this petition may be allowed.

#. Learned counsel for the petitioner submitted that the petitioner was on judicial custody when the order of detention was passed. There are only two offence registered against the detenue and therefore, the order passed by the detaining authority is bad in law and the same may be quashed and set aside.

#. Mr. K.T. Dave, learned AGP, appearing for the respondents has opposed this petition. He submitted that the petitioner is involved in bootlegging activities which is detrimental to public health and public order

and therefore, the petition may be dismissed.

#. Having regard to the rival side contentions, it may be noted that the detaining authority has placed reliance on the statements of two anonymous witnesses. These statements have been recorded on January 21, 2000 and January 22, 2000. The said statements have been verified by the detaining authority on January 24, 2000. The order is passed on that very day. Keeping in light the principles laid down by a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, and in the case of Bai Amina, w/o Ibrahim Abdul Rahim Alla v. State of Gujarat, 1981 GLR 1186, it cannot be said that the powers under section 9(2) of the PASA Act are properly exercised by the detaining authority. The detaining authority has not filed any affidavit-in-reply nor is there any contemporaneous material to indicate that the detaining authority undertook the exercise of considering the background, antecedents, character etc. of the detenue while arriving at subjective satisfaction about the correctness and genuineness of the statements and fear expressed by the witnesses so also about the need for exercise of powers under section 9(2) of the PASA Act. As such, the statements are verified and the order is passed on that very day and there was no time lag which could have permitted this exercise. Under the circumstances, there is improper exercise of powers under section 9(2) of the PASA Act which can be said to have affected the right of the detenue of making an effective representation.

#. Another aspect that adversely affects the order of detention is that the detenue was on judicial custody when the order of detention was passed. However, the detaining authority has not recorded justification for such detention on account of any compelling reasons as stated by the Apex Court in the case of Rameshwar Show, AIR 1964 SC 334, as reiterated in the case of Dharmendra Sugarchand Chelawat vs. Union of India & ors., AIR 1990 SC 1196 and again in the case of Sanjeev Kumar Aggarwal v. Union of India & ors., AIR 1990 SC 1202 and latest in the case of Ahmed Nisar v. State of Tamil Nadu, 1999 SCC (Cri) 1469, Para 46 and therefore, the order of detention cannot be supported as it does not indicate any genuine reason for passing the detention order (for "immediately preventing the petitioner from pursuing his activities"). Therefore, the order of detention cannot be sustained and the petition deserves to be allowed.

#. The petition is allowed. The impugned order of

detention dated January 24, 2000 is hereby quashed and set aside. The detenue - Nisharahmed @ Boss Rukmuddin Shaikh, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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